

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.2709 of 2018

Kathavarayan

..Petitioner

Versus

1.The Secretary to the Government
Home Prohibition & Excise Department
Secretariat,
Chennai 600 009.

2.The District Collector and
District Magistrate,
Vellore District,
Vellore-9.

..Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 09.11.2018 in C3/DO No.88/2018 against the petitioner's son Kothandaraman, Son of Kathavarayan, aged about 22 years, who is confined at Central prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.Parthiban

For Respondents: Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner is the father of the detenu, who, vide impugned Order of Detention dated 09.11.2018 passed by the 2nd respondent by invoking Section 2(b) of the Tamil Nadu Act 14 of 1982, in branding the detenu as ''Goonda'', came forward to file this Habeas Corpus petition.

2. A perusal of the grounds of detention dated 09.11.2018 would disclose that the order of detention was passed based on a solitary case. It is further averred that in the ground of detention that on 08.10.2018, based on the secret information, the Inspector of Police, Tirupathur Prohibition Enforcement Wing along with police authority, was mounting surveillance and they noticed that the detenu and his associate were found transporting spurious liquor in a Grey Colour Honda Activa whose registration number, engine number and chassis number were disfigured and the vehicle was stopped and those persons were examined and they disclose their identities and on search, the vehicle was found carrying on curtain box containing 20 bottles of spurious liquor. Both of them were arrested on 08.10.2018 at about 04.45 p.m and one of the accused namely, Bhuvanesh voluntarily came forward to give a confession statement and based on the admissible portion of the confession statement, they recovered some incriminating articles and samples were also drawn from the spurious liquor and later it is found that it contained poisonous substances. All the accused were produced before the Court of Judicial Magistrate No.I, Tirupathur and remanded to judicial custody till 23.10.2018 and the remand period was extended subsequently.

3. The Detaining Authority namely, the 2nd respondent, on the basis of materials, formed a subjective satisfaction that the detenu, who has committed the crime, have already come to adverse notice in a solitary case and his acts are prejudice to the maintenance of public order and accordingly, clamped the impugned orders of detention and challenging the legality of the same, the present Habeas Corpus Petition is filed.

4. The learned counsel appearing on behalf of the detenu would submit that for revoking the order of detention, passed against the detenu, the post detention representation dated 11.11.2018 was submitted and the Deputy Secretary, Home, Prohibition and Excise Department had dealt with the same on 04.12.2018 and the Honble Minister for Electricity, Prohibition and Excise had dealt with the same on 20.12.2018 and there was a delay of 14 days and even excluding 4 days holidays, still there was a delay of 10 days in dealing with the said representation and in the absence of proper explanation, the said delay is fatal to the impugned order of detention and therefore, prays for appropriate orders.

5. Per contra, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the State by drawing attention of this Court to the worksheet would submit that the delay cannot be construed as fatal and the 2nd respondent / Detaining Authority, after due and proper application of mind, has rightly clamped

the order of detention and hence prays for dismissal of this petition.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. A perusal of the worksheet as to the disposal of the representation would clearly reveal that the Deputy Secretary, Home, Prohibition and Excise (X) Department had dealt with the same on 04.12.2018 and the Honble Minister for Electricity, Prohibition and Excise had dealt with the same on 20.12.2018 and even excluding the Government holidays of 4 days, still there was a delay of 10 days in dealing with the said representation and no plausible or tenable explanation has been offered on behalf of the respondents as to the said delay. In the considered opinion of this Court, the delay in dealing with the representations violates the valuable right guaranteed to the detenu under Article 22 of the Constitution of India and hence on the sole ground, the impugned order warrants interference.

8. Accordingly, the Habeas Corpus Petition stands allowed and the Detention Order passed by the second respondent in C3/DO No.88/2018 dated 09.11.2018 is set aside and the detenu namely Kothandaraman, Son of Kathavarayan, aged about 22 years, who is confined at Central prison, Vellore, is set at liberty forthwith unless his detention / custody is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to the Government
Home Prohibition & Excise Department
Secretariat,
Chennai 600 009.
2. The District Collector and
District Magistrate, Vellore District,
Vellore-9.
3. The Superintendent,
Central Prison,
Vellore.

4.The Joint Secretary to Government,
Public (Law and Order),
Fort St.George, Chennai-9.

5.The Public Prosecutor,
High Court, Madras-104.

HCP.No.2709 of 2018

GJ-II (CO)

RRS (17/06/2019)